Court of King's Bench of Alberta

Citation: Condominium Corporation No 0425913 (New Cambridge Lofts) v 1126592 Alberta Ltd, 2026 ABKB 714

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Date: 20261013
Docket: 2403 18175; 2403 18195
Registry: Edmonton

Docket: 2403 18175

Between:

Condominium Corporation No 0425913 operating as the New Cambridge Lofts

Plaintiff

- and -

1126592 Alberta Ltd

Defendant

And Between: **Docket:** 2403 18195

Condominium Corporation No 0425913 operating as the New Cambridge Lofts

Plaintiff

- and -

Donald Schopflocher and Robert Bailey Moffatt

Defendants

Memorandum of Decision
of the
Honourable Applications Judge L.A. Smart

Introduction

[1] The Cambridge Building office tower was converted in 2004 to a condominium complex operating as the New Cambridge Lofts (NCL) containing residential, commercial and parking units. Space on the ground floor was converted to 11 parking stalls/units and are the only parking units in the subject building. 1126592 is the owner of 3 of those units, and Schopflocher and Moffatt together own 1 unit (collectively the Parking Unit Owners (PUOs)).

[2] It is common ground that the developer did not install a proper top coating/membrane or create a drainage system in the parkade area. The developer instead added about a six-inch layer of a concrete leveling substance without dealing with drainage or a top coating.

[3] In 2011, water was discovered to have been seeping from the parkade into the electrical room below resulting in a complete loss of power including failure of the emergency backup generator. A temporary patch was installed at that point. The Reserve Fund Study completed in 2015 identified delamination of the parkade concrete flooring. In 2016 a report prepared in relation to the structural condition of the parkade among other things concluded that the flooring remained in serviceable condition although it identified the need for waterproofing and drainage estimated at $25,000 to $35,000 for a top coating and a cost between $195,000 and $265,000 for the structural repair and waterproofing. When these options were presented to all of the parking unit owners, they were opposed by them with threats of litigation coming from some. In early 2018 NCL engaged an engineering firm to prepare design and tender documents but following an AGM in May resulting in a significant change in the Board membership, that engineering firm was terminated. A decision to rely on earlier quotes was proposed but deferred until 2019. In July 2019, waterproofing of the parkade commenced.

[4] In 2023, the Board decided to have further waterproofing of the parkade completed. At that point it was discovered that the floor topping was compromised and not bonded to the concrete in the parkade. The 6-inch concrete leveling substance had to be removed which disclosed further issues including yet another 3-inch topping of concrete.

[5] After further engineering study, estimates were prepared for the cost of structural repairs alone with the parkade to be decommissioned, and for structural repairs plus parkade restoration, The former was estimated to be $335,000 and an additional $165,000 for parkade maintenance. A special levy of $335,000 was assessed against all units based on unit factors. A special levy of $165,000 was assessed as against the owners of the parking units at $15,000 each. The PUOs did not pay their allocated assessment to the condominium corporation. NCL registered a caveat and seeks a foreclosure remedy in accordance with the provisions of the *Condominium Property Act.* The owners of the other parking units have paid their respective assessments.

[6] There is no dispute among the parties that the remedy sought is available for properly assessed contributions (condo fees) including special levies. Defences have been filed. Much of the complaint is that the NCL Boards failed to deal with the “parkade” issues in a timely fashion exacerbating the situation.

The Assessment

[7] Section 39.1 of the *Condominium Property Act*, RSA 2000, c C-22 (the *Act*) provides special levies are to be assessed against a unit based on its proportionate share of unit factors unless it is provided in the bylaws that the method for determining each unit’s share of the levy

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may be other than unit factors of owners' respective units. The Bylaws of NCL specifically excepts out parking units. Paragraph 4.06.1 states: "Irrespective of the Unit Factors of Parking Units and having regard to the identifiable expenses related to the current and future maintenance and upkeep of Parking Units, the Board may levy special assessments in respect of Parking Units."

[8] It is argued that s 9(1) of the *Act* because of the way it describes boundaries of a unit, a special levy must be confined to expenses incurred within the four corners of that unit. It is noted that there are spaces between the parking stalls and there is a drive lane that stretches from the parkade entrance to the back wall of the parkade that are common property. The parking unit owners do not have exclusive use of the parkade which is also used as a loading zone by commercial unit owners. In addition, the floor of the parkade serves as a roof for the commercial tenants below.

[9] An affidavit appending correspondence from the solicitor who drafted the NCL Bylaws was filed in these proceedings. The correspondence speaks to what he had in mind generally while doing the drafting and that it was not his intention to have them offend the fundamental principles of the *Act*. Some argument was made that perhaps such an opinion was subject to privilege. I have read the correspondence and find it unhelpful with the interpretation of the Bylaws and, in particular, paragraph 4.06.1.

[10] Owners and anyone in possession of a unit are bound by the bylaws. The bylaws bind the corporation and the owners to the same extent as if the bylaws had been signed and sealed by the corporation and by each owner. In that sense an owner and a corporation are bound as though they entered into a contract. When interpreting the bylaws it is my view that the starting point is that the rules of contractual interpretation apply. It requires a straightforward objective reading of the words in their ordinary sense. This is not a negotiated contract situation as the bylaws are in place when someone purchases a unit. They agree to be contractually bound by virtue of the *Act*. It is in that context that bylaws must be interpreted recognizing the statutory scheme established by the *Act*. Integral to the *Act* is the creation of mechanisms to manage and administer a complex joint ownership structure having regard to the need for responsible and efficient management of the common elements and the owners' units in the context of that structure. It includes the ability of the majority to control administration and management of the property permitting infringement upon property rights otherwise enjoyed by an owner in fee simple governed by the *Act* and a Condominium Corporation's bylaws. Within that context it is entirely conceivable and legally acceptable for some owners to be treated differently. Those treated differently may conclude they are treated unfairly or have additional burdens that others do not.

[11] For a parking unit to be functional there must be access. The Condo Plan in this case designated the access as common property. As noted there are other users of this common property. The NCL Board concluded that a proper approach to be taken for assessment was for all of the Owners to share based on Unit Factors in the cost of structural restoration work said by the engineers to be related to the parkade albeit such restoration was to a degree connected to the building's overall structural integrity. Without more those repairs would be sufficient for the continuing safe use of the building but if that floor was continued to be used as a parkade, additional work was required to facilitate its proper functioning as a parkade. Most importantly, much of this additional work was necessary to avoid damage to the building structure arising from and incidental to the use of units for parking. Considering the contributions made by all

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Owners for restoration and the costs that would not be incurred if the parking was eliminated, the NCL Board allocated such costs to the parking unit owners to restore parking capability.

Discussion

[12] There are really two aspects of the assessment to be considered. The first is whether the language of the Bylaw captures the work to be completed. In my view, to give the interpretation as argued would be far too restrictive. The work to be completed is directly related to current and necessary continuing maintenance if the parking units are to be used as parking stalls. The Bylaw is sufficiently broad in its language to capture this work and its allocation to parking unit owners.

[13] A second aspect which I have alluded to above is whether the amount assessed is appropriately charged to the parking unit owners. NCL has attached numerous engineering and related reports to its filed materials. While I am mindful that this method of introducing that evidence is hearsay and not proof of its contents, they demonstrate that the Board did not simply arbitrarily allocate without consideration of the competing factors the circumstances presented. The decision to allocate the repair of the parkade was made in the light of the expert guidance it had received and its conclusion was based on a straightforward, logical, and common-sense approach.

[14] There is ample authority for the proposition that Courts should not lightly interfere with an elected Board of a Condo Corporation acting within its jurisdiction and purport to substitute its opinion about the propriety of their opinions and actions unless they are clearly oppressive, unreasonable and contrary to the legislation.

Conclusion

[15] The NCL Board made a decision resulting in parking unit owners being assessed amounts not borne by other unit owners. It was made pursuant to its Bylaws and employed a reasoned approach. The decision in this context can be described neither as oppressive or unreasonable.

[16] Accordingly, NCL is granted its Redemption Order with a six month redemption period with costs on a solicitor and own client basis to be assessed. The amount declared to be owing is the amount of the Special Levy for each parking unit. While the Bylaws authorize the Board to specify an interest rate on arrears up to 18%, there is no evidence that such an action was ever taken by an NCL Board. Pre-judgment interest is granted based on the applicable judgment interest rate from the date of the levy. In the event, there is no redemption within the Redemption period the units will be offered for sale on such terms and conditions to be set by further Order.

Heard on the 9th day of December, 2025.
Dated at the City of Edmonton, Alberta this 13th day of October, 2026.

L.A. Smart
A.J.C.K.B.A.

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Appearances:

Megan Harris
Emery Jamieson LLP
for the Plaintiff/Applicant

Amir Farooqi
Draper Farooqi LLP
for the Defendants/Respondents, Donald Schopflocher and Robrt Bailey Moffatt

Craig Paterson
Paterson & Company
for the Defendant/Respondent, 1126592 Alberta Ltd

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